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fixed wages and prices, and left almost no scope to individual initiative.

Then came, after several centuries, the modern view which was initiated through the great industrial revolution of the eighteenth century, and for which we in America have stood more than any other nation. This is the movement of individualism, which rests upon the theory of free competition and of personal initiative. Worked out first by the great writers of the eighteenth century, it has found its greatest practical realization in this country, because of the boundless continent which we have had to conquer and because of the consequent need of individual energy in coping with the difficulties of the situation.

Now, in modern times we have seen a reaction, a necessary reaction, a reaction due largely to the very causes which have been adverted to by some of the speakers to-night. We have found that individual initiative, cut loose from any control from above, means, in great measure, the abuse of the one by the other; means the power of the strong individual to succeed, the fate of the weak individual to succumb. The trend of thought at the end of the nineteenth century, as it will be more strongly the trend of thought in the twentieth century, is to effect a compromise between these two legitimate principles, of individualism on the one hand, and (using the word in its widest sense) of socialism on the other. What the world is tending to, in other words, is the socialization of private initiative, the keeping of what is good and true and fruitful in private initiative, but the harnessing of the individual to the yoke of society.

Now let us apply this thought to the problem in hand. If we take a similarly broad view of the development of political life, we find that there also has been going on a flux and a reflux. In early times, there was no such thing as a nation. A man was a citizen of a town. A foreigner was not alone a stranger from another country; the man who came from another village was equally a foreigner. It made no difference to the merchants of York whether a "foreigner" came from an English town or from a Flemish or an Italian or a German town; all alike were foreigners. But in the sixteenth and seventeenth centuries there came a great epoch of nation-building, stimulated by the great industrial development of the age. This growth of nations paved the way for the beginnings of international law. If I mistake not, it was through the meetings at Augsburg and Westphalia that nations for the first time came together to agree upon certain international principles.

Now in the eighteenth century there came a wider and broader movement, not alone in politics, but in philosophy, in economics, nay in every phase of human thought. It was the idea which lay at the bottom of the theories of the French philosophers and encyclopedists, the idea which was the basis of the doctrines of Rousseau and the other political reformers, the idea which really paved the way for the economic doctrines of the Physiocrats, the idea, namely, of a world-state. Let us have no more nations, said they; let us merge the nation into a universal state, the universal republic. Patriotism is antiquated, patriotism is immoral; we will have no more patriotism, we will have only the love of the individual for the Creator. Natural rights are broader than the domain of any one state. That was the doctrine which led to the French Revolution; and it was from many points of view, a noble

doctrine and constituted a real advance in civilization.

But here again the nineteenth century, especially the end of the nineteenth century, has witnessed another and a necessary reaction. What we want is not the giving up of nationality, not an abandonment of patriotism, not the merging of the nation in the whole, but the blending of the one nation with this greater international unity. What we desire is to keep alive all those forces which make for a true and upright spirit of nationality, but to discourage the ignoble, the selfish forces which only make for a false nationality.

From the economic point of view there is another thought which is important in this discussion. We economists have been accustomed to teach, now for many a year, that liberty is indeed a divine thing, but that there can be no true liberty without a real equality; an equality, indeed, only of opportunity, for there is no such thing as equality of power or of intellect. What does international arbitration mean? It means that we are applying to the political world this economic conception of the blending of liberty and equality. Liberty without equality, as between nations, would mean swallowing up of the weaker nations, even though there be some reason for their continuance, by the stronger ones. Liberty with equality means that when a nation feels that it has justice behind it it is no longer weak, but has become strong. Therefore international arbitration, as any movement which tends in this direction, conduces to the maintenance of an important force which makes for progress and creates civilization.

Therefore, it is that we must all welcome such conferences as this. When a pebble is dropped into a lonely lake by our side, we see the little ripple gradually giving its impulse to others, until we have a whole series of concentric circles. Let us hope that this Conference and its successors may act like the pebble and that this wave of noble resolve and high aim may flow out into the wider ocean of public opinion, until the ever widening circles shall ultimately embrace the entire thinking part of our population, and we shall finally achieve what we all so fervently have at heart.

An International Court.

BY HON. ROBERT EARL, FORMERLY CHIEF JUSTICE OF THE COURT OF APPEALS OF NEW YORK.

Mr. President, Ladies and Gentlemen,—The enthusiasm which has been manifested here, and the hope that has been expressed for the cause of arbitration, have encouraged and inspired me, as no doubt they have every one present. I agree mainly with what has been said, and I firmly believe that in the future the cause which we all have at heart will certainly triumph. But I go further, and make what may be to some a surprising announcement, that the cause of arbitration is already triumphant. The conscience of the civilized world has been so educated and stimulated by the influences which have emanated from these conferences, by the peace conferences held in other parts of our country and in Europe, and by what has been said in the great schools of learning, in the halls of legislation and in the public press, that I confidently believe that there will be no war in the future among civilized nations over any dispute which could be fairly said to be a subject for arbitration.

Indeed, there has been no war in very recent times, so

far as I can recall, that could have been settled by arbitration or by any international court. The war between Turkey and Greece, which involved the relations of Turkey to her own territory and to her own subjects, could not have been a subject of arbitration. If the cause of the present war had been simply the blowing up of the "Maine" in the harbor of Havana, the conscience of this country and of other civilized nations would have demanded that it should be referred to arbitrators, and it would have been so referred. But the relations of a nation to its own people can never be a subject for arbitration. There were other questions besides the blowing up of the "Maine" involved in our present war with Spain which may or may not have been, I am not going to say which, a just cause for war.

But while I firmly believe that the conscience of the civilized world, in its present stage of enlightenment, will not permit war in any case which can be arbitrated or submitted to a court, yet there is abundant field for such work as we are here engaged in. There is constant necessity for stimulating and educating the public conscience; and keeping it alive to a great question like this. One great step forward has been taken in the fact that nations, by treaties, have adopted the practice of setting up tribunals of arbitration especially for the settlement of disputes as they arise. I am not certain that within the lifetime of many persons here present we shall get any farther than the creation of such special boards of arbitration for the settlement of questions as they arise. That furnishes a very ample remedy for accomplishing the purpose we have in hand. But, so much being accomplished, we have an ideal higher than that. The nations of the earth ought to go farther. They ought to create a more perfect tribunal; they ought to establish a great international court, to which all national disputes will be referred, and by which they will be decided.

The creation of such a court will be attended with very great difficulties. It was a difficult thing to establish the Constitution of our country, and to frame a great tribunal which should settle, according to law, the disputes between the several states without resort to force. The achievement of our forefathers, when they set up this supreme tribunal, was considered almost a miracle. A still greater miracle will it be if the nations of the earth can come together and set up a great tribunal which shall settle all international disputes which are capable of being so settled. And yet it is within the range of possibility; it is a consummation devoutly to be wished; it is the ideal at which we should aim.

Now how is such a tribunal to be set up? I am inclined to think that the resolution which is now before us, offered by Mr. Forbes, furnishes a practical initiative. Such a tribunal must be established by international treaties. Our nation, or England, or a combination of nations, should call a congress of nations, to formulate the plan of such a court. That body of men, when they meet, will have the most tremendous problem to solve which has ever been before a convention of men. It will have to determine how this tribunal shall be constituted, what shall be its jurisdiction, what its procedure, and how, if at all, its judgments shall be enforced.

It is almost vain to talk now of the manner in which such a tribunal shall be constituted. My own judgment is that it would have to be constituted of members representing all the nations belonging to what we call "the

family of nations." They are all sovereign and would require a representation in the tribunal. Whether that representation should be equal or not, it is impossible now to determine. The larger nations would probably have the larger representation; but that would not be a bad tribunal in which every civilized nation was represented by one member, and it would be a most safe body for the consideration of all international disputes which are capable of being decided by such a tribunal.

As I have already intimated, there are questions which cannot be settled by such a tribunal, such as relations of a government to its own citizens and to its own territory. But nearly all the disputes which ordinarily arise between nations could be so settled. Questions of honor have pretty generally been excepted; but where a question of honor arises between individuals it can be submitted to the arbitration of friends. Under the "code of honor," it was common to submit the quarrel to mutual friends to determine what reparation should be made; and as between nations I know of no reason why a similar course should not be taken.

It has been said that questions of territory ought to be exempted from the jurisdiction of such a tribunal. But a large proportion of the arbitrations already held have been on questions of territory and boundary, such as those involved in the Venezuela case. There could not be submitted to a tribunal of this kind the question whether a nation possessing undisputed territory should for any reason surrender that territory. For instance, there could be no submission of the question between France and Germany as to the possession of Alsace and Lorraine, or of the question whether Turkey should give up Crete, or whether she should move out of Europe altogether and confine herself to Asia. But nearly all questions which in a civilized age can be supposed to be a cause of dispute among nations could be submitted to such a great international tribunal as we have in view.

It is sometimes said that such a tribunal would be useless because it has no way of enforcing its judgments. But the awards of all boards of international arbitration have so far been practically observed; the public sentiment of the world is sufficient to enforce any award made by such an august tribunal as we think should be set up. And again, if it were necessary to use any sort of force, the discontinuance of diplomatic relations on the part of all the nations represented in this tribunal would be sufficient to bring any nation to terms.

So I see no difficulties whatever in the working of this tribunal if the nations will set it up. How can they be induced to set it up? There lies the great difficulty; it is in reference to that that we must work continually, until we have educated the intelligence and conscience of the people of the world sufficiently to induce them to take hold of this problem and carry the reform through to success. Let me say in closing that we shall not advance this great cause of international peace by urging that our own country should become a great warlike nation and set up great armaments. We shall further this cause most by proclaiming the great laws of charity and peace, by cultivating peaceful relation with the nations of the earth, by binding them all to us in ties of friendship and with the strong cords of self-interest and commerce, by cultivating commerce with all the nations of the earth, and by making them thus dependent upon us and us upon them.

In that way the cause of peace will be advanced, and the time will come when war will be too serious and too costly, as well as too wicked, for any nation to engage in it.

A Permanent Tribunal.

BY WALTER S. LOGAN OF THE NEW YORK BAR.

Mr. President,—International arbitration has played an important part, it is true, in the world's history. But the word "arbitration" suggests, to the ordinary mind, the thought of two people who have a difference and "leave it out" to their neighbor to patch up some sort of a settlement. Such an arbitrator usually "splits the difference" and satisfies nobody. Arbitration may be a good way of settling questions which depend upon privilege, but we Saxons have based our jurisprudence upon the idea of right.

Arbitration between individuals has played an important part in the history of municipal jurisprudence; but the world soon found out that to set up a court for every difficulty that arose was not the true way of administering justice. We very soon found that we could not take the great step in civilization which has been taken in the establishment of judicial tribunals, unless those tribunals were of a permanent character and the judges who sat in them had a permanent tenure.

I know of no way in which we who are called upon to draw the plans for a scheme of international jurisprudence can perform our duty except to draw those plans upon the background which we have in our municipal tribunals. The first great step was the establishment of municipal tribunals where rights could be protected and controversies decided, not according to the will of an individual, but according to the law of the land. That step was taken by our race and by men who spoke our language. There was, it is true, a jurisprudence of ancient Rome, from which we have borrowed more in form than in substance, I think; but from which we have borrowed something; but it was founded upon privilege and not upon right. The Latin judge sat as a representative of a monarch, dispensing justice as a bounty to the suitors before him. We Saxons have established tribunals in which the judge sits only as a mouthpiece of the state to administer the law of the land. The Saxons were the first race to establish tribunals in which rights could be determined. Our whole jurisprudence, our whole civilization, is based upon rights; and rights can not be determined in such a tribunal as is secured by a temporary arbitration treaty. You must have a Permanent Tribunal. You must have a court administering a well established law. You must have a court which is independent, not only in the executive power of the land, but even of the temporary public sentiment which happens to prevail in any country.

I am convinced that such a tribunal must be established, at least the initiative must be taken, by the men of the same race, by the men who speak the same language as those who established and placed upon so firm a foundation the municipal tribunals which now ensure order throughout the civilized world. Two years ago, when you did me the honor to ask me to stand here, I advocated the establishment of a tribunal composed of judges from, and selected by, the highest courts of judicature of the different nations of the earth. I have somewhat modified my opinion since then, for two reasons. Those

of us who read and studied the trial of Emile Zola in France soon became convinced that the Latin race has not any more now than of old caught the true spirit of free independent jurisprudence. I do not think that our nation and the English nations are yet ready to submit their controversies to a permanent tribunal conducted on the principles on which that trial was conducted. The Zola trial may not be worse than some things that have occurred in the jurisprudence of our race; it may not be worse than the Bloody Circuit of Jeffries or the trial of the witches at Salem. But the Bloody Circuit and the witchcraft trials were *exceptions*; I am very much afraid that the trial of Zola was but *illustrative* of Latin methods of judicature.

The second reason why I am modifying my opinions is that the Saxon race in these days is making such progress that whatever tribunals it may establish for itself will soon come to be accepted perforce by the rest of the world. If England and America will now establish a tribunal where their differences can be settled, such a court will find knocking at its door all the other nations of the earth who have difficulties to be settled.

The Lord Chief-Justice of England, two years ago, delivered an address before the American Bar Association, in which he took strong grounds against a permanent international tribunal. I did not think then that he represented the true sentiment of the English people. The New York State Bar Association officially took issue with him; I am sure this Conference takes issue with him also. Lord Russell gave two reasons why he did not believe it was desirable to have a permanent international tribunal. The first was that he thought the judges who would compose such a tribunal, being men like ourselves, would have such tremendous power and responsibility, and would have causes of such immense magnitude before them, that they could not be trusted to render an impartial and unbiased decision. Secondly, he thought that if we made the settlement of controversies between nations too easy, we should have too many controversies to settle. I differ with him on both these points. Experience does not show that by increasing the importance of a judicial tribunal you increase the difficulty of obtaining judges to fill its offices satisfactorily. The two great judicial tribunals in this country, the two tribunals before which come the most important questions for decision, are the Supreme Court of the United States, and the Court of Appeals of the State of New York, in which our friend, Judge Earl, sat for nearly a generation, and over which he for a time presided. Those courts have presented to them causes of immense magnitude, involving amounts greater than the national revenue of the majority of the nations of the earth. But there has never been serious complaint that those tribunals did not perform their work satisfactorily, or that their judges were not worthy of the positions which they held. There is much less difficulty in finding satisfactory judges for the Supreme Court of the United States than there is in finding satisfactory justices of the peace or police judges in our cities. It is characteristic of our race, and let us thank God that it is, that when men are placed in positions of responsibility they rise to the position. The men selected for the judges of our higher tribunals may not be always so far superior to their fellows as might seem to be necessary; but once you place even a lawyer of ordinary ability in a high position upon the bench, he grows to fit the position. The